

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. PETER W. HALL,
Circuit Judges.

Fen-Mao Lin, Xian Lin-Qi,
Petitioners,

-v.-

No. 05-0733-ag (L);
05-0734-ag (Con)
NAC

Bureau of Citizenship and Immigration Services,
Respondent.

FOR PETITIONERS: Theodore Cox, New York, New York.

FOR RESPONDENT: Rosa Emilia Rodriguez Velez, United States Attorney, Nelson Pérez-Sosa, Germán A. Rieckehoff, Assistant United States Attorneys, San Juan, Puerto Rico.

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND

1 DECREED that these consolidated petitions for review of a decision of a Board of Immigration
2 Appeals (“BIA”) are hereby DENIED.

3 Petitioners Fen-Mao Lin and Xian Lin-Qi, natives and citizens of China, seek review of a
4 January 25, 2005 order of the BIA affirming the October 27, 2003 decision of Immigration Judge
5 (“IJ”) Patricia Rohan denying their application for asylum and withholding of deportation. *In re*
6 *Fen-Mao Lin*, No. A 70 850 144 (B.I.A. Jan. 25, 2005), *aff’g* No. A 70 850 144 (Immig. Ct. N.Y.
7 City Oct. 27, 2003). We assume the parties’ familiarity with the underlying facts and procedural
8 history of the case.

9 This Court reviews the agency’s factual findings, including adverse credibility
10 determinations, under the substantial evidence standard, treating them as “conclusive unless any
11 reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. §
12 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).
13 However, we will vacate and remand for new findings if the agency’s reasoning or its fact-
14 finding process was materially flawed. *Cao He Lin v. U.S. Dep’t of Justice*, 428 F.3d 391, 406
15 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir. 2004); *see also Xiao Ji Chen*
16 *v. U.S. Dep’t of Justice*, 434 F.3d 144, 158-60 (2d Cir. 2006) (agreeing with this principle, but
17 avoiding remand, in spite of deficiencies in an adverse credibility determination, because it could
18 be confidently predicted that the IJ would adhere to the decision were the case remanded).

19 In this case, the IJ found that Lin’s testimony was incredible, inasmuch as he was unable
20 to offer a reasonable explanation for stating in his initial asylum application that his wife had
21 been forcibly sterilized in 1987, when he admitted at the hearing and in his supplemental asylum
22 application that his wife was sterilized in 1995, two years after he submitted his initial asylum

1 application. Lin also admitted that his wife filed a false application, in which she claimed that
2 Lin was in China in 1995, when she was allegedly sterilized.

3 Lin argues that the IJ completely disregarded his reasonable explanation that a travel
4 agency falsely prepared his and his wife's initial asylum applications. The agency need not credit
5 an applicant's explanations for inconsistent testimony unless those explanations would compel a
6 reasonable fact-finder to do so. *See Majidi v. Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005). The
7 IJ's findings are reasonable and supported by substantial evidence in the record.

8 The IJ further noted that Lin did not bring his wife, who was present in the United States,
9 to testify on his behalf, nor did he submit corroborating statements from family members or
10 witnesses which may have supported his recitation of events. The IJ determined that such
11 corroboration was necessary because of the prior submission of false statements and claims
12 before the court. As a result of the false applications submitted by both Lin and his wife, it was
13 reasonable for the IJ to expect evidence corroborating Lin's testimony. *See Xiao Ji Chen*, 434
14 F.3d at 164; *Zhou Yun Zhang*, 386 F.3d at 78.

15 Because Lin was unable to show the objective likelihood of persecution needed to make
16 out an asylum claim, he was necessarily unable to meet the higher standard required to succeed
17 on a claim for withholding of removal. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006);
18 *See also Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003).

19 For the foregoing reasons, these consolidated petitions for review are DENIED. Having
20 completed our review, any stay of removal that the Court previously granted in these petitions are
21 VACATED, and any pending motion for a stay of removal in these petition are DENIED as
22 moot. Any pending request for oral argument in these petitions are DENIED in accordance with

1 Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: _____